

APPEAL NO. 040135
FILED MARCH 8, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on December 18, 2003. With respect to the issues before her, the hearing officer determined that the appellant's (claimant) compensable injury of _____, includes an injury to the cervical spine, but does not include an injury to the thoracic and/or lumbar spine, and that the claimant had disability, as a result of her compensable injury, from August 7, 2003, through the date of the hearing. In her appeal, the claimant argues that the hearing officer's determination that her compensable injury does not include an injury to the thoracic spine and/or lumbar spine is against the great weight of the evidence. In its response, the respondent (carrier) urges affirmance. The carrier did not appeal the determinations that the claimant's compensable injury includes an injury to the cervical spine or that the claimant had disability from August 7, 2003, through the date of the hearing.

DECISION

A timely appeal not having been filed, the decision and order of the hearing officer have become final pursuant to Section 410.169.

Pursuant to Section 410.202(a), a written request for appeal must be filed within 15 days of the date of receipt of the hearing officer's decision. Section 410.202 was amended effective June 17, 2001, to exclude Saturdays, Sundays, and holidays listed in Section 662.003 of the Texas Government Code from the computation of time in which to file an appeal. Section 410.202(d). Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 143.3(c) (Rule 143.3(c)) provides that an appeal is presumed to have been timely filed if it is mailed not later than the 15th day after the date of receipt of the hearing officer's decision and received by the Texas Workers' Compensation Commission (Commission) not later than the 20th day after the date of receipt of the hearing officer's decision. Both portions of Rule 143.3(c) must be satisfied in order for an appeal to be timely. Texas Workers' Compensation Commission Appeal No. 002806, decided January 17, 2001.

Commission records indicate that the hearing officer's decision was mailed to the claimant on December 23, 2003. Pursuant to Rule 102.5(d), unless the great weight of evidence indicates otherwise, the claimant is deemed to have received the hearing officer's decision five days after it was mailed or on December 28, 2003, in this instance. In her appeal, the claimant states that she received the decision of the hearing officer on December 29, 2003. However, the Appeals Panel has held that when Commission records show mailing to the claimant on a particular day at the correct address, the mere assertion that the decision was received after the deemed date of receipt is not sufficient to extend the date of receipt past the deemed date of receipt. See Texas Workers' Compensation Commission Appeal No. 022550, decided November 14, 2002.

Based on the December 28, 2003, deemed date of receipt, the appeal needed to be mailed no later than January 20, 2004. The claimant's appeal was mailed to the Commission on January 21, 2004, and is, therefore, untimely.

The appeal being untimely, the jurisdiction of the Appeals Panel was not properly invoked and the decision and order is final pursuant to Section 410.169.

The true corporate name of the insurance carrier is **AMERICAN HOME ASSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Robert W. Potts
Appeals Judge